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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,596	07/08/2002	Hiroyuki Nakajima	1131-0463P	3711

2292 7590 03/19/2007

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EXAMINER	
LEUNG, JENNIFER A	

ART UNIT	PAPER NUMBER
1764	

NOTIFICATION DATE	DELIVERY MODE
03/19/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/069,596	**Applicant(s)** NAKAJIMA ET AL.	
	Examiner Jennifer A. Leung	**Art Unit** 1764	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 12-15.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: SEE CONTINUATION SHEET.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

CONTINUATION SHEET

Continuation of Item 11.

The request for reconsideration has been considered, but it does not place the application in condition for allowance for the same reasons set forth in the final Office Action.

Applicants (at the bottom of page 4) argue that the obviousness type double patenting rejection is unclear. As stated in the final Office Action, the rejection is based on claim 1 of US 6,463,734, to Tamura et al. The claim substantially claims the invention of the instant claims, including,

> "a catalyst device composed of a three way catalyst for purifying harmful substance in the exhaust gas when an exhaust air-fuel ratio is substantially stoichiometrical and an NOx catalyst having a function of absorbing NOx in the exhaust gas when the air-fuel ratio is closer to a lean air-fuel ratio than to said stoichiometrical air-fuel ratio, said catalyst device being provided in an exhaust passage of said internal combustion engine;".

And as stated in the final Office Action under item 4, Tamura et al. is silent as to the specific components of each layer of the three-way catalyst as claimed. Hence, claim 1 of US 6,463,734 is silent as to claiming the specific components of each layer of the three-way catalyst as claimed. The references to Kaneko et al. and Takahata et al. were then relied upon to teach the missing features. And thus, the same comments with respect to Tamura et al., Kaneko et al. and Takahata et al. as set forth in the previous portions of the action apply.

Applicants (at page 5) further argue that it is unclear as to where Takahata et al. discloses the claimed features of "a catalyst inner layer containing an admixture of both rhodium and platinum as noble metals, wherein a ratio of rhodium to platinum content in the inner layer is from 1:1 to 1:10, and a catalyst surface layer containing platinum in a range from 0.05 to 10.0 g/l of catalyst volume."

As restated from the final Office Action, the claimed features may be found at "Examples 1 and 7 of Takahata et al.; see also, generally, col. 4, lines 41-43; col. 5, lines 9-40; col. 7, lines 35-38, 58-65; col. 8, lines 5-10."

For instance, Examples 1 and 7 present a three-way catalyst having two layers, wherein the inner catalyst layer is formed of Pt and Rh in admixture. The catalyst contains 5 g/ft^3 of Rh and 35 g/ft^3 of Pt, and therefore, the ratio of rhodium to platinum content in the inner layer of these Examples is 1:7.

Furthermore, the Examples state that the second layer, which is formed on the surface of the inner catalyst layer, may comprise a noble metal at a loading of 20 g/ft^3, which is the equivalent of 0.7 g/l. Although Examples 1 and 7 use Pd as the catalytic component of the second layer, Takahata et al. further teaches that Pt may be used in substitution of Pd (i.e., Pt, Pd or both in an amount of 5 – 50 g/ft^3; see column 5, lines 23-40).

In addition, Applicants (at the top of page 6) argue that Takahata does not actually disclose any catalyst used in Applicants' apparatus. Also, Applicants (beginning at the bottom of page 6) argue that Takahata et al. teaches away from the invention, in that Takahata expresses a preference for the provision of Rh and Pt in separate layers as opposed to an admixture.

The Examiner respectfully disagrees. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). *See also Upsher-Smith Labs. v. Pamlab*, LLC, 412 F.3d 1319, 1323, 75 USPQ2d 1213, 1215 (Fed. Cir. 2005). In addition, disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use. *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

Jennifer A. Leung
March 9, 2007

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